

Message Text

LIMITED OFFICIAL USE

PAGE 01 BONN 07419 01 OF 02 071747Z

45

ACTION EUR-12

INFO OCT-01 ISO-00 CIAE-00 DODE-00 PM-03 H-02 INR-07 L-02

NSAE-00 NSC-05 PA-01 PRS-01 SP-02 SS-15 USIA-06 IO-10

ACDA-05 SAJ-01 OMB-01 /074 W
----- 054842

R 071730Z MAY 75

FM AMEMBASSY BONN

TO SECSTATE WASHDC 9930

INFO AMEMBASSY BERLIN

USMISSION USBERLIN

AMCONSUL BREMEN

AMCONSUL DUSSELDORF

AMCONSUL FRANKFURT

AMCONSUL HAMBURG

AMCONSUL MUNICH

AMCONSUL STUTTGART

LIMITED OFFICIAL USE SECTION 01 OF 02 BONN 07419

E.O. 11652: N/A

TAGS: PINT, GW

SUBJECT: CONSEQUENCES OF SAARLAND ELECTION FOR BUNDESRAT

BEGIN SUMMARY: THE MAY 4 SAARLAND ELECTION WHICH RESULTED IN A STALEMATE (25 SEATS FOR THE SPD AND FDP, 25 SEATS FOR THE CDU) HAS FOCUSED ATTENTION ON WHAT THE ELECTION WILL MEAN IN THE BUNDESRAT. SHOULD THE SAARLAND IN FUTURE ABSTAIN ON CONTROVERSIAL LEGISLATION IN THE BUNDESRAT, THE PRESENT 21 TO 20 CDU/CSU MAJORITY WILL END. HOWEVER, AN ABSOLUTE MAJORITY IS REQUIRED FOR PASSAGE OF LAWS WHICH REQUIRE BUNDESRAT CONSENT (MOST IMPORTANT REFORM LEGISLATION) AND WITH THE SAARLAND ABSTAINING, NEITHER THE SPD/FDP LAENDER NOR THE CDU/CSU LAENDER WILL HAVE AN ABSOLUTE MAJORITY. THE COALITION IN BONN HAS SUGGESTED THAT A THREE PARTY GOVERNMENT BE

LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 02 BONN 07419 01 OF 02 071747Z

FORMED IN THE SAARLAND, WHILE THE NATIONAL CDU WOULD

LIKE TO SEE A COALITION FORMED WITH THE FDP IN THE SAAR-
LAND WHICH MIGHT SERVE AS A MODEL FOR THE FORMATION OF
THE FEDERAL GOVERNMENT AFTER THE 1976 BUNDESTAG ELEC-
TIONS.

END SUMMARY.

1. THE DEAD HEAT FINISH IN THE SAARLAND LANDTAG ELEC-
TION, WHERE THE FDP AND SPD TOGETHER WON 25 SEATS AND
THE CDU 25 SEATS HAS FOCUSED CONSIDERABLE ATTENTION ON
THE CONSEQUENCES OF THE ELECTION FOR THE BALANCE OF
POWER IN THE BUNDESRAT. UNTIL A NEW GOVERNMENT TAKES
OFFICE IN THE SAARLAND, THE CDU/CSU LAENDER HAVE A 21
TO 20 MAJORITY IN THE PLENARY SESSIONS (THE BERLIN
REPRESENTATION CANNOT VOTE ON LEGISLATION IN THE PLE-
NARY SESSIONS). IN THE BUNDESRAT COMMITTEES, THE SPD/
FDP LAENDER HAVE A MAJORITY OF 6 TO 5 BECAUSE BERLIN IS
ENTITLED TO VOTE. IN THE BUNDESTAG-BUNDESRAT JOINT
CONFERENCE COMMITTEE, WHICH MEETS TO IRON OUT DIFFER-
ENCES ON LEGISLATION, AND WHICH IS COMPOSED OF 11 BUN-
DESTAG AND 11 BUNDESRAT MEMBERS (INCLUDING BERLIN) THE
SPD AND FDP HAVE A MAJORITY OF 12 TO 10.

2. ASSUMING A COMPROMISE IS WORKED OUT IN THE SAARLAND
THAT WOULD NEUTRALIZE THE SAARLAND VOTE IN THE BUNDES-
RAT PLENARY SESSIONS (E.G.,
ABSTAINING ON CONTROVERSIAL ISSUES) THE OPPOSITION
LAENDER WOULD LOSE THE MAJORITY (I.E., SPD/FDP WOULD
HAVE 20 VOTES, CDU/CSU 18 VOTES AND THE SAARLAND 3 AB-
STAINING VOTES). EACH LAND WHOSE VOTING STRENGTH DE-
PENDS UPON ITS POPULATION MUST VOTE AS A UNIT IN THE
BUNDESRAT. IT IS CLEAR THAT UNDER SUCH A SITUATION
THE CDU/CSU LAENDER WOULD NOT BE ABLE TO DELAY PASSAGE
OF SO-CALLED SIMPLE LAWS (I.E., LAWS THAT DO NOT RE-
QUIRE THE CONSENT OF THE BUNDESRAT).

3. A NEUTRALIZATION OF THE SAARLAND VOTE IN THE BUNDES-
RAT WOULD NOT, HOWEVER, LEAVE THE SPD/FDP LAENDER WITH
AN ABSOLUTE MAJORITY. AN ABSOLUTE MAJORITY (21 VOTES)
IS NECESSARY TO APPROVE THOSE LAWS WHICH REQUIRE THE
CONSENT OF THE BUNDESRAT (PRIMARILY LAWS AFFECTING THE
LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 03 BONN 07419 01 OF 02 071747Z

RIGHTS AND INTERESTS OF THE LAENDER IN AREAS SUCH AS
ADMINISTRATION, FINANCE AND TAXATION; AMENDMENTS TO THE
BASIC LAW REQUIRE A 2/3 MAJORITY, I.E., 28 VOTES).
ARTICLE 52(3) OF THE BASIC LAW (CONSTITUTION) READS THAT
"THE BUNDESRAT SHALL TAKE ITS DECISIONS WITH AT LEAST
THE MAJORITY OF ITS VOTES." UP UNTIL 1950, IT WAS
BELIEVED THAT A SIMPLE MAJORITY WAS SUFFICIENT TO TAKE
SUCH DECISIONS. HOWEVER, IN 1950, THE LEGAL COMMITTEE

OF THE BUNDESRAT DETERMINED THAT AN ABSOLUTE MAJORITY WAS NECESSARY. THEREFORE, SHOULD THE SAARLAND ABSTAIN, NEITHER THE SPD/FDP LAENDER NOR THE CDU/CSU LAENDER WOULD HAVE AN ABSOLUTE MAJORITY.

4. THE QUESTION OF WHICH BUNDESTAG LAWS REQUIRE BUNDESRAT CONSENT IS OPEN TO LEGAL DISPUTE. IT IS CLEAR THAT MOST SIGNIFICANT REFORM BILLS CONCERNING EDUCATION,

LIMITED OFFICIAL USE

NNN

LIMITED OFFICIAL USE

PAGE 01 BONN 07419 02 OF 02 071749Z

45
ACTION EUR-12

INFO OCT-01 ISO-00 CIAE-00 DODE-00 PM-03 H-02 INR-07 L-02

NSAE-00 NSC-05 PA-01 PRS-01 SP-02 SS-15 USIA-06 IO-10

ACDA-05 OMB-01 SAJ-01 /074 W
----- 054871

R 071730Z MAY 75
FM AMEMBASSY BONN
TO SECSTATE WASHDC 9931
INFO AMEMBASSY BERLIN
USMISSION USBERLIN
AMCONSUL BREMEN
AMCONSUL DUSSELDORF
AMCONSUL FRANKFURT
AMCONSUL HAMBURG
AMCONSUL MUNICH
AMCONSUL STUTTGART

LIMITED OFFICIAL USE SECTION 02 OF 02 BONN 07419

TAXATION AND POLICE POWERS DO REQUIRE CONSENT AND THEREFORE IT IS OF GREAT POLITICAL IMPORTANCE WHICH GROUP IN THE BUNDESRAT HAS AN ABSOLUTE MAJORITY. FOR EXAMPLE, THE GOVERNMENT BILL WHICH IS STILL IN COMMITTEE CONCERNING INDUSTRIAL CODETERMINATION (MITBE-

STIMMUNG) IS BELIEVED BY THE GOVERNMENT NOT TO REQUIRE BUNDESRAT CONSENT, WHILE THE OPPOSITION CLAIMS THAT IT WILL. WHAT HAPPENS IN THE CASE OF A LAW WHEN THERE IS A DISPUTE BETWEEN THE BUNDESRAT AND BUNDESTAG AS TO WHETHER IT REQUIRES BUNDESRAT CONSENT IS THAT THE GOVERNMENT CAN SEND THE LAW TO THE FEDERAL PRESIDENT EVEN THOUGH THE BUNDESRAT HAS TURNED IT DOWN. THE FEDERAL PRESIDENT, ON THE ADVICE OF HIS LEGAL ADVISERS, MAKES A DECISION AS TO WHETHER THE BILL WAS PROPERLY PASSED (I.E., WHETHER HE ACCEPTS THE GOVERNMENT'S VIEW LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 02 BONN 07419 02 OF 02 071749Z

THAT IT DOES NOT REQUIRE CONSENT) AND SIGNS THE BILL INTO LAW OR REFUSES TO SIGN THE BILL ON THE GROUNDS THAT IT REQUIRES BUNDESRAT CONSENT. IF HE SIGNS THE BILL, THE GROUP IN THE BUNDESRAT THAT CLAIMED THE BILL REQUIRED BUNDESRAT APPROVAL OR A SINGLE BUNDESLAND CAN TAKE THE CASE TO THE FEDERAL CONSTITUTIONAL COURT IN KARLSRUHE. THERE HAS BEEN A CASE OF A LAW PASSED CONCERNING SOCIAL SECURITY BENEFITS WHERE THE OPPOSITION LAENDER IN THE BUNDESRAT CLAIMED THAT BUNDESRAT CONSENT WAS NECESSARY, BUT THE GOVERNMENT WENT AHEAD WITHOUT IT AND THE LAW WAS SIGNED BY THE FEDERAL PRESIDENT. THE CDU-GOVERNED LAND RHINELAND-PALATINATE BROUGHT THE CASE BEFORE THE KARLSRUHE COURT AND IN THIS PARTICULAR CASE THE COURT DETERMINED THAT BUNDESRAT CONSENT WAS NOT NECESSARY.

5. IN ACTUAL PRACTICE, COMPARATIVELY FEW LAWS HAVE BEEN REJECTED BY THE BUNDESRAT. BETWEEN 1949 AND 1972, 2,690 LAWS PASSED SUCCESSFULLY THROUGH THE BUNDESTAG/BUNDESRAT PROCESS AND ONLY 46 BILLS FAILED TO GET THROUGH THE BUNDESRAT. MOST OF THESE CASES WERE LAWS CONCERNING STATISTICS, AMENDMENTS TO TAX LAWS, ETC. THE ONLY MAJOR BILL THAT HAD BEEN TURNED DOWN BY THE BUNDESRAT IN RECENT MEMORY WAS A 1972 LAW CONCERNING ALTERNATIVE SERVICE IN LIEU OF MILITARY SERVICE. IN 1973 A NEW LAW, WHICH TOOK INTO CONSIDERATION THE VIEWS OF THE OPPOSITION IN THE BUNDESRAT, WAS INTRODUCED AND PASSED BOTH HOUSES.

6. THE POLITICAL IMPORTANCE OF THE OPPOSITION PARTIES MAINTAINING AN ABSOLUTE MAJORITY IN THE BUNDESRAT HAS NOT BEEN IN THAT THEY STYMIED GOVERNMENT LEGISLATION THAT HAD BEEN PASSED BY THE BUNDESTAG, BUT WAS RATHER THE ABILITY OF THE OPPOSITION LAENDER IN THE BUNDESRAT TO FORCE MODIFICATIONS OF GOVERNMENT LEGISLATION (EITHER BEFOREHAND BECAUSE THE GOVERNMENT RECOGNIZED THE LIMITS OF WHAT IT COULD GET THROUGH THE BUNDESRAT OR AFTERWARDS IN THE JOINT CONFERENCE COMMITTEE).

7. IT IS STILL NOT CLEAR WHAT THE EFFECTS OF THE

SAARLAND ELECTION WILL BE ON THE BUNDESRAT. THIS WILL
DEPEND ON WHAT KIND OF COMPROMISE IS MADE IN THE SAAR-
LAND ABOUT THE COMPOSITION OF A NEW GOVERNMENT (SOME
LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 03 BONN 07419 02 OF 02 071749Z

POSSIBILITIES ARE A THREE PARTY GOVERNMENT, A MINORITY
CDU GOVERNMENT WHICH AGREES TO ABSTAIN ON CONTROVERSIAL
ISSUES IN THE BUNDESRAT, OR A COALITION GOVERNMENT
BETWEEN THE CDU AND FDP OR THE CDU AND THE SPD). THE
COALITION IN BONN HAS CALLED FOR AN ALL PARTY GOVERN-
MENT IN THE SAARLAND, WHILE THE CDU IS ATTEMPTING TO
KEEP THE PRESSURE ON THE FDP IN THE HOPE OF FORMING A
CDU/FDP COALITION THAT COULD SERVE AS A HARBINGER FOR
A GOVERNMENT IN BONN AFTER THE 1976 BUNDESTAG ELEC-
TIONS. THE PRESENT CDU GOVERNMENT IN THE SAARLAND WILL
STAY IN OFFICE UNTIL JULY 13, 1975 AND COULD REMAIN IN
A CARETAKER STATUS FOR AN INDEFINITE PERIOD UNTIL A
SOLUTION IS FOUND. SOME CONSTITUTIONAL LAWYERS BELIEVE
THAT A CARETAKER GOVERNMENT WOULD HAVE FULL POWER TO
VOTE IN THE BUNDESRAT.
HILLENBRAND

LIMITED OFFICIAL USE

NNN

Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: ELECTION RESULTS, UPPER HOUSE
Control Number: n/a
Copy: SINGLE
Draft Date: 07 MAY 1975
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: ellisoob
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1975BONN07419
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D750160-0575
From: BONN
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1975/newtext/t19750571/aaaacmlb.tel
Line Count: 248
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION EUR
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 5
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: n/a
Review Action: RELEASED, APPROVED
Review Authority: ellisoob
Review Comment: n/a
Review Content Flags:
Review Date: 29 MAY 2003
Review Event:
Review Exemptions: n/a
Review History: RELEASED <29 MAY 2003 by BoyleJA>; APPROVED <07 OCT 2003 by ellisoob>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
05 JUL 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: CONSEQUENCES OF SAARLAND ELECTION FOR BUNDESRAT BEGIN SUMMARY: THE MAY 4 SAARLAND ELECTION WHICH RE-
TAGS: PINT, GE
To: STATE
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 05 JUL 2006